

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CASEY PERRY, # 244528,

Petitioner,

v.

Case Number: 10-cv-13501
Honorable Thomas L. Ludington

THOMAS BIRKETT,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF THE
COURT'S ORDER DENYING A CERTIFICATE OF APPEALABILITY AND DENYING
PETITIONER'S APPLICATION TO PROCEED IN FORMA PAUPERIS ON APPEAL**

On June 8, 2011, the Court issued an opinion and order denying Petitioner application for a writ of habeas corpus. Under Rule 11 of the Rules Governing § 2254 Proceedings, the Court “must issue or deny a certificate of appealability when it enters a final order.” Accordingly, in the opinion and order dismissing the petition, the Court concluded that a certificate of appealability was not warranted because reasonable jurists would not debate the Court’s assessment of Petitioner’s claims nor conclude that the claims deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

On July 8, 2011, Petitioner filed a motion for certificate of appealability, requesting that the Court reconsider its decision and grant a certificate of appealability on the claims presented in his petition.¹ Petitioner’s motion will thus be construed as a motion for reconsideration. A motion for reconsideration will only be granted if it demonstrates both a “palpable defect by which the court

¹ Under the Eastern District of Michigan’s Local Rules, motions for reconsideration must be filed “within 14 days after entry of the judgment or order.” E.D. Mich. L.R. 7.1(h)(1). Accordingly, Petitioner’s motion is untimely.

and the parties were misled” and that “correcting the defect will result in a different disposition of the case.” E.D. Mich. L.R. 7.1(h)(3). Petitioner’s motion does not meet either of those requirements. As a result, it will be denied.

Petitioner has also filed an application to proceed in forma pauperis on appeal. An appeal may be taken in forma pauperis if the appeal is taken in “good faith.” 28 U.S.C. § 1915(a). “Good faith” requires a showing that the issues are arguable on the merits and are, therefore, not frivolous; it does not require a showing of probable success. *Harkins v. Roberts*, 935 F. Supp. 871, 873 (S.D. Miss. 1996) (quoting *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983)). “If the district court can discern the existence of any nonfrivolous issue on appeal, the movant’s petition to appeal in forma pauperis must be granted.” *Harkins*, 935 F. Supp. at 873. Here, the Court cannot discern a nonfrivolous issue in this case and, thus, the appeal is not taken in good faith. and the application does not include the required affidavit, the application will be denied.

Accordingly, it is **ORDERED** that Petitioner’s motion for reconsideration of the Court’s order denying a certificate of appealability [Dkt. # 23] is **DENIED**.

It is further **ORDERED** that Petitioner’s application to proceed in forma pauperis on appeal [Dkt. # 26] is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: August 4, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and upon Casey Perry, #244528, at Chippewa Correctional Facility, 4269 W. M-80, Kincheloe, MI 49784, first class U.S. mail on August 4, 2011.

s/Tracy A. Jacobs

TRACY A. JACOBS